

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

VANS, INC. and VF OUTDOOR, LLC,

Plaintiffs,

v.

MSCHF PRODUCT STUDIO, INC.,

Defendant.

Case No. 1:22-cv-02156-WFK-RML

JURY TRIAL DEMANDED

Date of Service: December 2, 2022

JOINT STATUS REPORT

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Pursuant to this Court’s Status Report Order (“Order”) dated October 17, 2022, the parties hereby submit this joint status report. The parties mutually request that this Court continue the discovery stay in this matter for the following reasons:

This dispute involves the Brooklyn-based art collective MSCHF Product Studios, Inc.’s (“MSCHF”) use of modified trademarks and trade dress belonging to Vans, Inc. and VF Outdoor, LLC (collectively “Vans”). Vans asserts that MSCHF’s references to their trademarks and trade dress constitute trade dress infringement, while MSCHF maintains, amongst other defenses, that it has a First Amendment right to the use of the modified versions of the marks as part of its artistic expression. The District Court granted Vans’ preliminary injunction, and MSCHF obtained an expedited appeal from the Second Circuit. The briefing on the appeal is complete and oral argument occurred September 28, 2022.

As this Court previously recognized, the appeal will clarify the applicable law and likely define the parameters of the claims and the scope of discovery in this matter. (Minute Entry Dated October 17, 2022). The Second Circuit has not yet issued a ruling.

Further supporting the continued stay, since this Court issued its Order, the Supreme Court of the United States granted certiorari in *Jack Daniels Properties, Inc. v. VIP Products LLC*, No. 21-16969. 2022 WL 1654040 (9th Cir. 2022), *cert granted*, 598 U.S. __ (U.S. Nov. 21, 2022) (No. 22-148). *Jack Daniels* concerns the humorous use of Jack Daniels’ trademarks and trade dress by VIP Products on a dog toy. Although there are factual differences between *Jack Daniels* and this dispute, the Parties agree that the Supreme Court’s decision may provide additional guidance on the balance between trademark law and the First Amendment. A briefing schedule has been set in *Jack Daniels* and the parties anticipate a ruling in mid-2023.

Based on the recent developments, the Parties respectfully request that this matter continue to be stayed and that the parties will provide the Court with a status report on or before February 3, 2023.

Dated: December 2, 2022

Respectfully submitted,

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Dated: December 2, 2022

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